

BEFORE THE
STATE OF CALIFORNIA
OCCUPATIONAL SAFETY AND HEALTH
APPEALS BOARD

In the Matter of the Appeal of:

CALDWELL-ROLAND ROOFING, INC.
1635 Fourth Street
Berkeley, CA 94710

Employer

Docket No. 03-R1D4-2905

**DECISION AFTER
RECONSIDERATION**

The Occupational Safety and Health Appeals Board (Board), acting pursuant to authority vested in it by the California Labor Code and having taken the petition for reconsideration filed in this matter by Caldwell-Roland Roofing, Inc. (Employer) under submission, renders the following decision after reconsideration.

DECISION AFTER RECONSIDERATION

Before the Appeals Board is an Amended Decision dated October 21, 2005 by an Administrative Law Judge (ALJ) of the Board, denying Employer's appeal from a Serious violation of section 1670(a) [failure to provide approved fall protection where employee was exposed to fall hazard]. The Amended Decision recalculated the penalty proposed by the Division of Occupational Safety and Health (Division). The Amended Decision also reflects that Employer withdrew its appeals from a citation for violations of sections 342(a) and 1509(a).

On November 28, 2005, Employer filed a petition for reconsideration. On December 30, 2005, the Division filed an opposition to the petition for reconsideration. On January 13, 2006 the Board took the petition under submission, and stayed the Amended Decision of the ALJ pending a decision on the petition by the Board.

BACKGROUND

Employer is a roofing contractor engaged in the business of installing roofing material, and engaged in maintenance and servicing of existing roofs. An employee of Employer was engaged in sweeping leaves and other tree debris from near the edge of a roof when he slipped and fell 15 feet to the concrete surface below. The employee sustained serious injuries. The employee was

hospitalized for a period greater than 24 hours. The Division cited Employer for failure to provide fall protection equipment to its employee.

Employer contends its employee was engaged in a “roofing operation” under Article 30 of the Roofing Operations and Equipment Safety Orders (§§ 1723 – 1730) and therefore the Division cited Employer for the wrong safety order. Since the Division failed to cite Employer under the correct section, the citation is not valid. Also, Employer contends the record does not support a finding that the violation should be classified as serious.

FINDINGS AND REASONS FOR DECISION AFTER RECONSIDERATION

The ALJ fully considered the contentions raised by Employer in its petition, specifically, which safety order applied, and the quantum of evidence needed to support the finding of a serious classification. The Appeals Board has considered the amended decision of the ALJ and the record in light of Employer's petition for reconsideration and affirms the ALJ's summary of evidence, rulings, findings, and conclusions and **adopts the amended decision** in its entirety. Accordingly, the ALJ's amended decision is attached and incorporated herein by reference.

DECISION AFTER RECONSIDERATION

The amended decision of the ALJ dated August 30, 2005, denying Employer's appeal and imposing a civil penalty of \$12,600, is reinstated and affirmed.

CANDICE A. TRAEGER, Chairwoman
ART R. CARTER, Board Member

OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD
FILED ON: JUNE 9, 2010